No. 79-2026

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

JOHN SALORIO, ROBERT COE and
JOHN D. McGARR, JR.,

Appellants,

v.

SIDNEY GLASER, Director of the Division of Taxation,
Department of the Treasury of the State of New Jersey,

Appellee.

On Appeal from the Supreme Court of New Jersey

APPELLANTS' SUPPLEMENTAL BRIEF

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September 30, 1980

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APPELLANTS' SUPPLEMENTAL BRIEF

Appellants submit this supplemental brief to advise the Court of certain facts which heighten the urgent need for this Court promptly to enforce the mandate of *Austin* v. *New Hampshire,* 420 U.S. 656 (1975), and to vindicate appellants' rights under the Privileges and Immunities Clause.

In our Jurisdictional Statement, we showed that New Jersey has managed to stave off compliance with *Austin* for over three years by engaging in dilatory motion practice in the New Jersey state courts. (Jur. St. at 9-10). We showed, in addition, that the remand ordered by the Supreme Court of New Jersey would create much more delay. (Jur. St. at 10). We now wish to advise the Court of yet another delaying action by New Jersey which will subject appellants to lengthy further proceedings in the state courts if the decision below is not immediately reversed.

On September 16, 1980, the Supreme Court of New Jersey, reversing the two lower courts, granted New Jersey's motion to stay all proceedings on remand, *including trial preparation,* pending the resolution of this appeal.* The decision did not set forth any reasoning. New Jersey argued in its brief in support of the motion for a stay first that the filing of an appeal with this Court ousted the lower court of jurisdiction—an argument that is contrary to every authority. Second, New Jersey argued that

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* The New Jersey trial court properly exercised its discretion in refusing to stay trial preparation. Thereafter, the Appellate Division denied New Jersey's motion for leave to appeal the trial court's order. The Supreme Court of New Jersey saw fit to reverse this discretionary decision of the trial court—without the benefit of oral argument. A copy of the order of the New Jersey Supreme Court is appended to this Brief.

it needed an *additional* four to five months to prepare for a one or two day trial—an incredible estimate that was not supported by any statement by a knowledgeable person and is directly in conflict with New Jersey's representation to this Court that the relevant evidence is already in the record. (Appellee's Cross Petition for Certiorari, No. 80-123, at 6-7.) The decision of the New Jersey Supreme Court to stay trial preparation and discovery pending disposition of this appeal will result in inordinate delay of the trial on remand. Indeed, if New Jersey continues to have its way, the trial date alone will not take place until at least *ten months* after the New Jersey Supreme Court remanded this three and a half-year old case for a hearing.

This summary decision of the New Jersey Supreme Court to stay all trial prepration is in itself a violation of appellants' rights and a further disregard of this Court's clear mandate in *Austin*. For this additional reason, we urge this Court to reverse immediately the decision below, with instructions to declare the New Jersey Commuter Income Tax unconstitutional in light of *Austin* v. *New Hampshire*.

Respectfully submitted,

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September 30, 1980

APPENDIX

Order of the Supreme Court of New Jersey dated September 16, 1980

SUPREME COURT OF NEW JERSEY

M-28 SEPTEMBER TERM 1980

JOHN SALORIO, ROBERT COE & JOHN D. MCGARR, JR.,

Plaintiffs-Respondents,

vs.

SIDNEY GLASER, Director, Division of Taxation,

Defendant-Movant.

This matter having been duly presented to the Court, it is ORDERED that the motion for leave to appeal is granted and the matter is summarily reversed and remanded to the Superior Court, Chancery Division, Bergen County with directions that all discovery and pretrial proceedings be stayed pending the disposition by the United States Supreme Court of the Applications now before it.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 16th day of September, 1980.

STEPHEN W. TOWNSEND
Clerk